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Attorneys for Defendants

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

QIN CHEN,	)	
	)	No. C 07-4688 HRL
Plaintiff,	)	
	)	
v.	)	
	)	ANSWER
ALBERTO GONZALES, United States Attorney	)	
General, U.S. Department of Justice;	)	
MICHAEL CHERTOFF, Secretary of the	)	
Department of Homeland Security;	)	
EMILIO T. GONZALEZ, Director of United	)	
States Citizenship and Immigration Services;	)	
ROBERT S. MUELLER, III, Director of the	)	
Federal Bureau of Investigation,	)	
	)	
Defendants.	)	
_____	)	

The Defendants hereby submit their answer to Plaintiff's Complaint for Writ in the Nature of Mandamus and Declaratory Judgment under 28 U.S.C. § 1361.

1. Paragraph One consists of Plaintiff's characterizations of this action to which no responsive pleading is required; however, to the extent a responsive pleading is deemed necessary, Defendants deny that they have improperly withheld action on Plaintiff's application to his detriment.

**PARTIES**

2. Defendants admit the allegations in Paragraph Two.

3. Defendants deny the allegations in Paragraph Three.

4. Defendants admit the allegations in Paragraph Four.

5. Defendants admit the allegations in Paragraph Five.

? 6. Defendants admit the allegations in Paragraph Six.

### **JURISDICTION**

7. Paragraph Seven consists of Plaintiff's allegation regarding jurisdiction, to which no responsive pleading is required; however, to the extent a responsive pleading is deemed necessary, Defendants deny that this Court has jurisdiction under any of the provisions cited in Paragraph Seven.

### **VENUE**

8. Paragraph Eight consists of Plaintiff's allegations regarding venue, to which no responsive pleading is required. Defendants aver that unless specifically provided by law, aliens have no residence in the United States for venue purposes.

### **INTRADISTRICT ASSIGNMENT**

9. Paragraph Nine consists of Plaintiff's allegations regarding intradistrict assignment to which no responsive pleading is required; however, to the extent a responsive pleading is deemed necessary, Defendants deny the allegations in this paragraph.

### **EXHAUSTION OF REMEDIES**

10. Defendants deny the allegations in Paragraph Ten.

### **CAUSE OF ACTION**

11. Defendants admit that the Plaintiff filed an application for adjustment (Form I-485) on March 31, 2004. Defendants deny that Plaintiff's alien registration number is "A135 026 682."

12. Defendants admit the allegations in Paragraph Twelve; however, Defendants deny that "A135 026 682" is an alien registration number.

13. Defendants admit the allegations in Paragraph Thirteen.

14. Defendants admit the allegations in Paragraph Fourteen; however, Defendants deny "A135 026 682" is an alien registration number.

15. Defendants admit the allegations in Paragraph Fifteen.

16. Defendants admit the allegations in Paragraph Sixteen.

17. Defendants admit the allegations in Paragraph Seventeen.

1 18. Defendants admit the allegations in Paragraph Eighteen.

2 19. Defendants admit the allegations in Paragraph Nineteen.

3 20. Defendants admit the allegations in Paragraph Twenty.

4 21. Defendants admit the allegations in Paragraph Twenty-One.

5 22. Defendants admit the allegations in Paragraph Twenty-Two.

6 23. Defendants admit the allegations in Paragraph Twenty-Three.

7 24. Defendants admit the allegations in Paragraph Twenty-Four.

8 25. Defendants admit the allegations in Paragraph Twenty-Five.

9 26. Defendants admit the allegations in Paragraph Twenty-Six.

10 27. Defendants admit the allegations in Paragraph Twenty-Seven.

11 28. Defendants admit the allegations in Paragraph Twenty-Eight.

12 29. Defendants admit the allegations in Paragraph Twenty-Nine; however, Defendants deny that  
13 there are two A-numbers. Plaintiff's Exhibit 17 clearly shows that one of the numbers was a bad  
14 number.

15 30. Defendants admit the allegations in Paragraph Thirty.

16 31. Defendants admit the allegations in Paragraph Thirty-One.

17 32(a). Defendants deny the allegations in Paragraph Thirty-Two, subsection a.

18 32(b). Defendants admit the allegations in Paragraph Thirty-Two, subsection b.

19 32(c). Defendants deny the allegations in Paragraph Thirty-Two, subsection c. One name check  
20 was initiated for Plaintiff's employment authorization, and one for his current I-485 application.

21 33. Defendants deny the allegations in Paragraph Thirty-Three.

22 34. Paragraph Thirty-Four consists of Plaintiff's characterization of the lawsuit for which no  
23 answer is required; however, to the extent that such allegations are deemed to require an answer,  
24 Defendants deny the allegations in this paragraph.

25 35. Defendants deny the allegations in Paragraph Thirty-Five.

26 36. Paragraph Thirty-Six consists of Plaintiff's characterization of the lawsuit for which no answer  
27 is required; however, to the extent that such allegations are deemed to require an answer, Defendants  
28 deny the allegations in this paragraph.

37. Defendants deny the allegations in Paragraph Thirty-Seven.

38. Defendants deny the allegations in Paragraph Thirty-Eight.

**PRAYER**

39. Paragraph Thirty-Nine consists of Plaintiff's prayer for relief, to which no admission or denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny these paragraphs.

**AFFIRMATIVE AND/OR OTHER DEFENSES**

All allegations not here before specifically admitted, denied, or modified are hereby denied. For further and separate answer, Defendants allege as follows:

**FIRST DEFENSE**

The Court lacks jurisdiction over the subject matter of this action

**SECOND DEFENSE**

The Complaint fails to state a claim against the Defendants upon which relief can be granted.

**THIRD DEFENSE**

No acts or omissions by the United States or its employees were the proximate cause of any injury or damages to the Plaintiff.

**FOURTH DEFENSE**

At all times alleged in the complaint, Defendants were acting with good faith, with justification, and pursuant to authority.

**FIFTH DEFENSE**

The Defendants are processing the application referred to in the Complaint to the extent possible at this time. Accordingly, no relief as prayed for is warranted.

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1 WHEREFORE, Defendants pray for relief as follows:

2 That judgment be entered for Defendants and against Plaintiff, dismissing Plaintiff's Complaint  
3 with prejudice; that Plaintiff takes nothing; and that the Court grant such further relief as it deems just  
4 and proper under the circumstances.

5 Dated: November 13, 2007

Respectfully submitted,

6 SCOTT N. SCHOOLS  
7 United States Attorney

8 /s/  
9 MELANIE L. PROCTOR  
10 Assistant United States Attorney  
11 Attorneys for Defendants  
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